THE HON'BLR SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23486 OF 2005

-

08.11.2005

Between:

Teegala Krishna Reddy, S/o.Rami Reddy,

Mayor of Hyderabad City, R/o. Hydeabad.

… Petitioner

AND

1. Government of Andhra Pradesh, rep. by its

Principal Secretary, Municipal Administration

And Urban Devenopment (Elec.II) Department,

Secretariat, Hyderabad

And another

… Respondents

THE HON'BLR SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23486 OF 2005

ORDER:

The petitioner is Mayor of Hyderabad City. He filed the instant writ petition seeking the following relief.

> For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the Respondents in taking steps to abolish or dissolve the existing elected Council of Hyderabad Municipal Corporation in exercise of their purported powers under the Hyderabad Municipal Corporation act,

1955, with particular reference to Section 679-B and 679-D as illegal, arbitrary, unjust and in violation of the constitutional mandate contained in 74th Constitutional Amendments and Part IX-A of the Constitution of India with particular reference to Article 243U and other constitutional provisions and consequentially direct the Respondents not to abolish or dissolve the existing elected Council of Hyderabad Municipal Corporation and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

The petitioner was elected as Mayor of Hyderabad Municipal Corporation (MCH) in the elections held in January, 2002 and his term of five years expires on 10.01.2007. He alleges that 100 Corporators elected in January, 2002 have not so far suffered any criticism from any quarter. However, due to political and partisan considerations, a decision was taken by the Government to do away with opposition led MCH and with a ulterior motive at the instance of highest political executive of the Government, steps are initiated to dissolve MCH and remove Mayor. According to the petitioner, the reasons of such apprehension are (i) steps are initiated to remove the elected Council of MCH where the present ruling party does not have majority; (ii) the Government issued G.O.Ms.No.703, dated 20.07.2005, revealing the decision to constitute Greater Hyderabad Municipal Corporation by merging surrounding twelve Municipalities and other panchayats; (iii) the Commissioner of MCH was directed to place the proposal before the Council of MCH; (iv) the Government issued a show cause notice to all the twelve penumbral Municipalities under Section 3A(1)(a) of A.P.Municipalities Act, 1965 (Municipalities Act) and to eight gram panchayats to show cause as to why those Municipalities and gram panchayats should not be abolished and included in MCH; (v) by reason of constitution of a Municipality as a larger urban area for the purpose of constitution of Municipal Corporation as per Section 3(6) of A.P.Municipal Corporations Act, 1994 (Corporations Act), any Municipality existing before declaration as larger urban area, shall be deemed to have been abolished; and (vi) having purportedly completed all the steps for formation of Greater Hyderabad, the Government has already decided to abolish the MCH though the law does not permit the abolition of elected MCH and Constitution prohibits such abolition. It is also pointed out that on 04.08.2000, the Council of MCH rejected the proposal of the Government for formation of Greater Hyderabad. It is further averred that a Division Bench of this Court passed orders on 02.08.2005 in W.P.M.P.No.22313 of 2005 in W.P.No.17525 of 2005 staying the formation of Greater Hyderabad Municipal Corporation.

Sri S.Ramachandra Rao, the learned senior counsel for petitioner, submits that after the Constitution (Seventy-Fourth Amendment) Act, 1992 inserting Part IX-A, every Municipal Corporation and Municipality is protected under the Constitution and under Article 243U, every elected Municipality/Corporation shall have to be continued for five years unless it is dissolved in accordance with law. He would urge that under Section 679-D of Hyderabad Municipal Corporations Act, 1955, (HMC Act, for brevity), it is competent to the Government to dissolve the Corporation only in the circumstances mentioned in sub-section (1) of Section 679-D of HMC Act. He would also urge that such power cannot be exercised when the proposal to form

Greater Hyderabad Municipal Corporation is mooted. It is also his submission that the power to remove Mayor under Section 679-B of HMC Act cannot be exercised for the formation of Greater Hyderabad Municipal Corporation.

The learned Advocate General for the State submits that when power of the Government to remove the Mayor under Section 679-B and to dissolve the MCH under 679-D exist, even before such power is exercised, on a mere apprehension the writ petition is not maintainable. He would also urge that the petitioner has no cause of action to file the writ petition.

This Court has given anxious consideration to the facts of the case and the submissions made by the learned senior counsel for the petitioner. There is considerable force in the submission made by the learned Advocate General that the writ petition is premature and is intended to prevent the Government from exercising its powers under Constitution of India as well as the provisions of HMC Act.

The issue of notice to MCH under Section 3(2) of HMC Act or the issue of declaration under Section 3(6) of Corporations Act cannot give rise to any such apprehension that invariably the Government would exercise powers under Sections 679-B and 679-D of HMC Act. When the Government desires to establish a Municipality, it is required to take necessary action under A.P.Panchayat Raj, 1994 to exclude the area of gram panchayats so as to form a Municipality under Municipalities Act. Similarly, when the Government desires to form a new Corporation under Section 3(1) of the Corporations Act, the Government has to issue a notification specifying the larger urban area under Section 2(d) of the said Act whereupon the Municipality or Municipalities functioning prior to such notification shall be deemed to have been abolished. That is the procedure required to be complied under law. When such notifications are issued, in strict compliance with the provisions of law, the Mayor of MCH or the members of the Council of MCH cannot be said to have any grievance. Secondly, even according to the petitioner, the formation of Greater Hyderabad Municipal Corporation is under consideration of the Government and the Council has already rejected the proposal of the Government. Further, the proposal to form Greater Hyderabad Municipal Corporation is already challenged before this Court and this Court already stayed such formation.

Thirdly, the apprehension that the Government is likely to abolish MCH and remove the Mayor for extraneous reasons, is misconceived at this stage and in any event such a question can be adjudicated only when there is a proper notification either under Sections 679-B and 679-D of HMC Act. In this connection, a reference may be made to Article 243U(1) of the Constitution of India, which reads as under.

> **243U. Duration of Municipalities, etc-** (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:
>
> Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

A reference may also be made to Sections 679-B(1) & (2) and 679-D(1) & (4) of HMC Act, which read as under.

> **679-B. Government's power to remove Mayor or Deputy Mayor:-** (1) The Government may, by notification in the Andhra Pradesh Gazette, remove the Mayor or the Deputy Mayor who, in their opinion willfully omits or refuses to carry out or disobeys the provisions of this Act or any rules, bye-laws, regulations or lawful orders issued thereunder or abuses his position of the powers vested in him.
>
> (2) The Government shall when they propose to remove the Mayor or the Deputy Mayor under sub-section (1), give the Mayor or the Deputy Mayor concerned an opportunity for explanation, and the notification issued under the said sub-section shall contain a statement of the reasons of the Government for the action taken.

> **679-D. Government's power to dissolve the Corporation:-** (1) If, in the opinion of the Government, the Corporation is not competent to perform, or persistently, makes default in performing the duties imposed on it by or under this Act or any other law for the time being in force or exceeds or abuses its position or powers or a situation exists in which the municipal administration cannot be carried on in accordance with the provisions of this Act or the financial stability or credit of the Corporation is threatened, the Government may, by notification in the Andhra Pradesh Gazette, direct that the Corporation be dissolved with effect from a specified date and reconstituted either immediately or with effect from another specified date not later than six months from the date of dissolution; and the notification shall be laid before the Legislative Assembly of the State.
>
> (4) Before publishing a notification under sub-section (1), the Government shall communicate to the Corporation the grounds on which they propose to do so fix a reasonable period for the Corporation to show cause against the proposal and consider its explanation or objections, if any, and the Mayor of the corporation shall also be given a reasonable opportunity of being heard.

The procedure to be adopted for removal of a Mayor or Deputy Mayor is very clear. A Mayor can be removed if he
(i) wilfully omits or refuses to carry out or disobeys the provisions of the Act, Rules, Regulations or Bye-laws; (ii) disobeys lawful orders issued under the Act, Rules, Bye-laws or Regulations; and (iii) abuses his position or powers. Further, under sub-section (2) of Section 679-B of the HMC Act, before issuing a notification removing the Mayor, the Government is bound to give an opportunity for explanation and also includes statement of reasons to the notification.

Under Section 679-D of HMC Act, it is competent for the Government to dissolve the Corporation when in its opinion the Corporation (i) makes default in

performing the duties under the Act or any other law enforce; (ii) abuses its position or powers;
(iii) Municipal Administration cannot be carried on in accordance with the provisions of the HMC Act and/or (iv) the financial stability or credit of the Corporation is threatened. Under sub-section (4) of Section 679-D of HMC Act before issuing notification dissolving the Corporation, the Government shall have to communicate to the Corporation the grounds on which they propose to dissolve the Corporation and give reasonable period for the Corporation to show cause against his proposal. The Mayor of the Corporation is required to be given a reasonable opportunity of being heard before the issue of notification under Section 679-D of HMC Act. Further more any notification dissolving the Corporation shall have to be laid before the legislative assembly of the State.

An analysis of Sections 679-B and 679-D of HMC Act read with Article 243U of Constitution of India would show that the Legislature has taken abundant care to check any arbitrary exercise of power by the Government in the matter of removal of Mayor or dissolution of the Corporation. The provisions are so plain about the circumstances and grounds under which a Mayor can be removed or a Corporation can be dissolved and the apprehension of the petitioner that the Government is likely to resolve the Corporation for other reasons cannot be accepted.

As on today, the Government has not initiated any action nor the petitioner received any notice under Sections 679-B(2) and/or 679-D(4) of HMC Act. Therefore, if this writ petition is entertained at this stage treating it as *quia timet* action, it would amount to preventing constitutional authority from exercising its powers and discharging its functions.

In **S.R.Bommai v Union of India**, a nine-Judge Bench of the Supreme Court considered, *inter alia,* the question whether the proclamation issued by President of India under Article 356(1) of the Constitution of India is judicially reviewable. As an incidental question, the apex Court also considered power of Court to grant interim relief to stay fresh elections pursuant to dissolution of the Legislative Assembly. While concluding that if other conditions are satisfied, the Court would be justified in restraining the holding of fresh elections for constituting new legislative assembly, it ruled:

> The least relief that can be granted in such circumstances is an injunction restraining the holding of fresh elections for constituting the new Legislative Assembly. There is no reason why such a relief should be denied if a precaution is taken to hear the challenge as expeditiously as possible taking into consideration the public interests involved. The possibility of a delay in the disposal of the challenge cannot be a ground for frustrating the constitutional right and defeating the constitutional provisions. **It has, however, to be made clear that the interlocutory relief that may be granted on such challenge is to prevent the frustration of the constitutional remedy. It is not to prevent the constitutional authority from exercising its powers and discharging its functions. Hence, it would be wholly impermissible either to interdict the issuance of the Proclamation or its operation till a final verdict on its validity is pronounced.** Hence, the normal rules of quia timet action have no relevance

in matters pertaining to the challenge to the Proclamation.

(emphasis supplied)

As noticed hereinabove, the Government has not even issued notice and the petitioner filed the writ petition on a baseless apprehension. All the three great organs of the State – the Legislature, the Executive and the Judiciary; are bound to adhere to principle constitutional governance by rule of law. There cannot be any doubt for any wing of the State that the other two wings would not discharge their duties and functions in accordance with the Constitution of India. The general presumption in law is that all Government actions are carried on in accordance with law and there is no presumption that Government adopts an illegal means to achieve a legal purpose. Lastly, it is well settled that in exercise of power of judicial review, this Court only can review a decision by public authority. Such review is not available even in relation to notice issued by public authority. Therefore, ordinarily on a mere apprehension, the power under Article 226 of the Constitution of India cannot be exercised.

The writ petition, for the above reasons, is therefore, dismissed. No order as to costs.

_____

(V.V.S.RAO,J)

.11.2005.

pln